

REMARKS

Claims 1-12 are pending in the Application.

Claim Rejections – 35 USC § 103(a)

Claims 1-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over ORA Electronics magazine article (herein after ORA) in view of archived web site www.adt.com (herein after ADT). The Examiner states that it would have been obvious to modify the teaching of ORA Electronics to include well known teachings of emergency response system and service (monitoring and notification service/system) whereby a user pay a fee or buy a service in a package that includes a emergency service to a company (ADT), the company then use at least a portion of the revenue collected from the package to fund a safety control center (alarm monitoring center) that receives emergency signals conveyed from the location of the end user through an emergency network and contacts an emergency entity (police department, fire department, etc.) in response to the emergency signal to provide the emergency service as taught by ADT above as merely using well known business practice for paying a service of monitoring and notification service/system. Applicant respectfully traverses these rejections.

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” (emphasis added) (MPEP § 2143). “If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious.” (emphasis added) *In re Fine*, 837 F. 2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988). Applicant respectfully submits that independent Claims 1, 5 and 9 include elements that are not disclosed, taught or suggested by any of the references cited by the Patent Office, either alone or in combination.

ORA discloses a plug-and-play hands-free speakerphone *for use with portable cellular telephones* that instructs *the attached cellular phone to directly call 911 or a roadside assistance provider*. ADT discloses a home security service that monitors a

home and will contact any number of services through land phone lines based upon any number of events. There is no suggestion in either of the references that they be combined in the manner suggested by the Examiner. Absent such a suggestion, a person skilled in the art who was looking for a solution to the problem of providing emergency or roadside assistance for cellular phone users as exhibited by ORA would hardly be disposed on any objective basis, to consider a reference like ADT, which is not only unconcerned with cellular phones at all but which shows absolutely no recognition of the problem of cell phone users contacting emergency or road services, let alone any structure that would avoid or solve it.

In the obviousness rejection made, it is respectfully submitted that the Examiner is using non-analogous prior art, wherein there is no teaching or suggestion in any of the references which would support any of the claimed combinations. Obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some teaching or suggestion or incentive supporting the combination. *Ex Parte Skinner*, 2 U.S.P.Q. 2d 1788, 1790 (B.P.A.I. 1987).

It is respectfully submitted that the Examiner appears to be using hindsight reconstruction when making the obviousness rejection. The Examiner is picking and choosing among isolated disclosures in the non-analogous cited prior art to duplicate the claimed invention. It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Fritch*, 972 F.2d at 1265, 23 U.S.P.Q.2d at 1784 (quoting *In re Fine*. 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988)). The combination of the claim elements from non-analogous claim sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. There must be some reason, suggestion or motivation found in the cited prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge cannot come from the applicant's invention itself. *In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1442 (Fed. Cir. 1992).

Moreover, the structure that would result from the Examiner's proposed combination does not meet the terms of claim 1. Such claim recites "selling an end user a

cellular communications package that includes emergency services ... using at least a portion of the revenue collected from the cellular communications package to fund a safety control center". By contrast, ORA's plug-and-play speaker phone is merely an accessory for a cellular phone. ORA simply does not sell a communications package, but instead as stated in the reference is a "cellular telephone accessory". Therefore, there is nothing inherent within ORA that the purchase of the Rescue Mate system would include a cellular communications package. Further, ADT discloses a home security monitoring system that provides a home monitoring service which can contact a number of services on a client's behalf using land telephone lines or signal transmission and not cellular telephone communication. Therefore, the Examiner's combination actually teaches away from the present invention in that ORA discloses the use of a product with a cellular telephone and ADT does not disclose a cell phone whatsoever. Further, ORA discloses its product going through an existing cellular phone to *directly* contact an emergency service, while ADT discloses a land phone line first contacting a service center which then contacts any number of services on the client's behalf.

Therefore, the combination that would result would still lack selling an end user a cellular communications package that includes emergency services ... using at least a portion of the revenue collected from the cellular communications package to fund a safety control center as required by claim 1. Therefore, claim 1 is patentably distinct from the combination of ORA and ADT.

Based on the rationale above, Applicant contends that none of the references cited by the Patent Office against the present invention, either alone or in combination, teach, disclose or suggest the above-referenced elements as claimed in claim 1 of the present application and therefore, the above-cited references do not preclude patentability of the present invention under 35 U.S.C. § 103(a). Applicant further contends that it would not have been obvious to one of ordinary skill in the art at the time of the present invention to combine or modify any of the non-analogous above-cited references to arrive at the present invention as claimed. As a result, a *prima facie* case of obviousness has not been established for independent claim 1. Thus, independent claim 1 is patentably distinguishable from ORA and ADT.

Claims 2-4 depend from allowable base claim 1, therefore, claims 2-4 are

patentably distinguishable from ORA and ADT.

Similar arguments to those made above can also be made for claims 5-12. Therefore, claims 5-12 are also patentably distinguishable from ORA and ADT.

CONCLUSION

In light of the forgoing, reconsideration and allowance of the pending claims is solicited. Applicant would like to extend the possibility of a telephone interview at the number listed below if the Examiner believes this would be helpful.

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